

PATENT COOPERATION TREATY

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INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference NO 7615/WO	FOR FURTHER ACTION	See Form PCT/PEA/416
International application No. PCT/EP2004/006674	International filing date (day/month/year) 21.06.2004	Priority date (day/month/year) 23.07.2003
International Patent Classification (IPC) or national classification and IPC A47J31/40, B65D85/804		
Applicant NESTEC S.A et al.		
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 5 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> sent to the applicant and to the International Bureau a total of sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in Item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>		
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the opinion</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input checked="" type="checkbox"/> Box No. VI Certain documents cited</p> <p><input checked="" type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input type="checkbox"/> Box No. VIII Certain observations on the international application</p>		
Date of submission of the demand 25.01.2005	Date of completion of this report 05.10.2005	
Name and mailing address of the international preliminary examining authority:  European Patent Office - P.B. 5818 Patentlaan 2. NL-2280 HV Rijswijk - Pays Bas Tel. +31 70 340 - 2040 Tx: 31 651 epo nl Fax: +31 70 340 - 3016	Authorized Officer Bridault, A Telephone No. +31 70 340-	



**INTERNATIONAL PRELIMINARY REPORT
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International application No.
PCT/EP2004/006674

Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.

☐ This report is based on translations from the original language into the following language, which is the language of a translation furnished for the purposes of:

- ☐ international search (under Rules 12.3 and 23.1(b))
- ☐ publication of the international application (under Rule 12.4)
- ☐ international preliminary examination (under Rules 55.2 and/or 55.3)

2. With regard to the **elements*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

Description, Pages

1-21 as originally filed

Claims, Numbers

1-15 as originally filed

Drawings, Sheets

1/8-8/8 as originally filed

☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing

3. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/figs
- ☐ the sequence listing (*specify*):
- ☐ any table(s) related to sequence listing (*specify*):

4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/figs
- ☐ the sequence listing (*specify*):
- ☐ any table(s) related to sequence listing (*specify*):

* If item 4 applies, some or all of these sheets may be marked "superseded."

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Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	6, 7, 9, 13, 14
	No: Claims	1-5, 8, 10-12, 15
Inventive step (IS)	Yes: Claims	6, 7, 9
	No: Claims	1-5, 8, 10-15
Industrial applicability (IA)	Yes: Claims	1-15
	No: Claims	

2. Citations and explanations (Rule 70.7):

see separate sheet

Box No. VI Certain documents cited

1. Certain published documents (Rule 70.10)

and / or

2. Non-written disclosures (Rule 70.9)

see separate sheet

Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

see separate sheet

Re Item V

Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Reference is made to the following document:

D1: US 2002/129712 A1

2. The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claim 1 is not new in the sense of Article 33(2) PCT.

A system according to claim 1 is implicitly disclosed by D1.

This document discloses a system according to the preamble of claim 1. Further, said system can use capsules intended for forming different beverages. In paragraph 70, D1 states that the geometry of the extraction chamber of the capsule can be chosen so as to aid in the formation of foam. This implies that, depending on the extraction chamber of the capsule, a beverage with or without foam can be obtained. Furthermore, also in the same paragraph, D1 states that the characteristics of the foam can be chosen. The skilled reader will understand therefrom that several different capsules can be provided, with several foaming characteristics.

In paragraph 70, the reader is taught that the foam can be obtained thanks to mechanical impingement of the beverage extract; in paragraph 74, that it can be obtained through a given orifice size of the extraction exit site. In both cases, as a consequence of these arrangements, the extraction pressure is impacted.

For these reasons, the system of D1 has also the technical features of the characterising part of claim 1.

3. The capsules disclosed in D1 have furthermore all the additional features noted in dependent claims 2 to 5, 8, and 10 to 12. The subject-matter of said claims is therefore not new either.
4. For the reasons exposed in paragraph 2 above, the method of claim 15 is not new.

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(SEPARATE SHEET)**

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5. The additional features of claims 13 and 14 do not involve an inventive step, since they appear to result from a mere choice by the skilled person.
6. The combination of the features of dependent claim 6 is neither known from, nor rendered obvious by, the available prior art, because said prior art does not suggest to monitor the extraction pressure by adapting the resistance of the capsule, in any of the ways listed in claim 6.
7. Claim 7 depends on claim 6, and as such meets also the requirements of the PCT with respect to novelty and inventive step.
8. The combination of the features of dependent claim 9 is neither known from, nor rendered obvious by, the available prior art, because said prior art does not suggest to monitor the extraction pressure by adapting the piercing protrusions of the capsules.

Re Item VII

Certain defects in the international application

Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed in the document D1 is not mentioned in the description, nor is this document identified therein.